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November 2, 2023

VIA ELECTRONIC FILING

Hon. Patrick G. Radel
U.S. Bankruptcy Court
Alexander Pirnie U.S. Courthouse and Federal Building
10 Broad Street
Utica, NY 13501

Re: *The Roman Catholic Diocese of Ogdensburg, New York; Case No. 23-60507;*
The Roman Catholic Diocese of Ogdensburg, New York; et al. v. Certain
Underwriters at Lloyd's, London; et al.; Adv. Pro. Case No. 23-80013 -
Mediator Selection

Dear Judge Radel:

In accordance with the Court's *Order Referring Certain Matters to Mediation* (the Mediation Order) [Adv. Pro. Docket No. 39] entered on October 18, 2023, the Court issued a deadline of November 2, 2023 to advise the Court whether the Roman Catholic Diocese of Ogdensburg, New York (the "Diocese"), the Official Committee of Unsecured Creditors (the "Committee"), and each of the insurers identified as defendants in the above-referenced adversary proceeding (the "Insurers") (collectively, the "Mediation Parties"), were able to agree upon a mediator in the above-referenced adversary proceeding. I am writing to advise the Court that unfortunately the Mediation Parties have not been able to reach an agreement upon a mediator.

The Diocese has consulted and communicated by written correspondence with counsel for the Committee and counsel for several of the Insurers concerning prospective mediator candidates. As noted, unfortunately, at this time, there is no agreement between the Mediation Parties concerning the selection of a mediator. Therefore, in accordance with the Court's Mediation Order, the Diocese hereby submits the following three prospective mediators for your consideration:

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1. **Hon. Gregg W. Zive.** Judge Zive has presided over multiple Catholic Diocese chapter 11 cases specifically in regard to child victim issues. Judge Zive is currently the mediator in the Diocese of New Orleans chapter 11 case and a co-mediator in the Diocese of Rochester, New York chapter 11 case. He has mediated multiple chapter 11 cases and has successfully mediated many of the Catholic Diocese cases on which he has worked. Judge Zive has extensive experience and is the current sitting U.S. Bankruptcy Judge in the District of Nevada. Since Judge Zive is currently an acting Bankruptcy Court Judge, there would be no charge for his services other than reimbursement of expenses.
2. **Hon. Patrick H. NeMoyer (Ret.).** Judge NeMoyer is a retired New York State Supreme Court Justice, Appellate Division, Fourth Department, with extensive experience. Judge NeMoyer is the current mediator appointed by Chief Judge Carl L. Bucki, U.S. Bankruptcy Court for the Western District of New York, in the pending mediation concerning the Diocese of Buffalo, N.Y. chapter 11 case. That mediation is ongoing at this time. Judge NeMoyer's compensation is \$450 per hour plus expenses.
3. **Paul J. Van Osselaer.** Mr. Van Osselaer has mediated numerous Catholic Diocese cases specifically in regard to child victim cases. Mr. Van Osselaer is currently a co-mediator in the Diocese of Rochester, New York chapter 11 case, and the mediator in the Roman Catholic Diocese of Syracuse, New York and the Diocese of Rockville Centre, New York chapter 11 cases. Mr. Van Osselaer has mediated multiple chapter 11 diocesan cases including the Archdiocese of Santa Fe. Mr. Van Osselaer charges \$700 per hour for his services.

We have attached biographies for each of the three candidates.

In our discussions with counsel for the Committee, the Committee proposed only one candidate. After interviewing the Committee's sole candidate, and conferring with the insurance carriers involved in this case, we believe that the candidates proposed by the Diocese are better positioned to move mediation forward. Moreover, the fees that the Committee's proposed mediator would charge are far more than any of the candidates proposed by the Diocese, which would be highly burdensome to the estate.

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We respectfully request that the Court schedule a status conference with the Mediation Parties to assist the Court in selecting a mediator.

Thank you for your consideration.

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC



Stephen A. Donato

SAD/ta

cc: Father Kevin J. O'Brien (via electronic mail)
Charles J. Sullivan, Esq. (via electronic mail)
Grayson T. Walter, Esq. (via electronic mail)

Honorable Gregg W. Zive

Judge Zive was sworn in as a U.S. Bankruptcy Judge for the District of Nevada in its Reno office on January 23, 1995 and was reappointed in 2009. He was Chief Judge from October 1, 1999 to September 30, 2008. He was the Chair of the Ninth Circuit Conference of Chief Bankruptcy Judges from October 2005 to September 2006.

Judge Zive graduated from the University of Nevada in 1967 with a B.A. in journalism. He graduated magna cum laude from the University of Notre Dame Law School in 1973 where he was a member and an editor of the law review. He was admitted to the bars of California (1973) and Nevada (1976) and to the bar of the Supreme Court of the United States . Prior to becoming a judge, Judge Zive's practice was as a general civil litigator, concentrating in the areas of commercial, contract, real property, and employment relations law.

Judge Zive is a past president of the National Conference of Bankruptcy Judges. He is a Fellow of The American College of Bankruptcy (inducted in 2005). Since 2008 he has been a director of the American Bankruptcy Institute. He is a member of the Washoe County Bar Association (president, 1992-1993), Nevada State-Federal Judicial Council, State Bar of Nevada Advisory Commission on Law Related Education and Master Emeritus of the Bruce R. Thompson Chapter of the American Inns of Court. He has been a member of the Ninth Circuit Public Information & Community Outreach Committee and the Ninth Circuit Standing Committee on ADR.

He has taught and been a presenter at numerous seminars regarding various bankruptcy-related topics as well as civil procedure, evidence, real property, employment law and trial techniques and has published articles relating to those topics.

[2021 Order re: Temporary Transfer to the Central District of California](#)

[2020 Order re: Temporary Transfer to the Central District of California](#)

[2019 Order re: Temporary Transfer to the Central District of California](#)

[2018 Order re: Temporary Transfer to the Central District of California](#)

[2017 Order re: Temporary Transfer to the Central District of California](#)

Hon. Patrick H. NeMoyer



Justice NeMoyer was first elected to the New York State Supreme Court for the Eighth Judicial District in 1997. He was re-elected in 2011 and was designated to the Appellate Division, Fourth Department by Governor Andrew M. Cuomo on February 19, 2016. Justice NeMoyer began his legal career in 1977 as a Confidential Law Clerk and later Principal Law Clerk for Administrative Judge James B. Kane of the Eighth Judicial District. He served as Erie County Attorney from 1988 until 1993, when President Bill Clinton nominated him to serve as United States Attorney for the Western District of New York, a position he held until his election to the bench. Justice NeMoyer continues to be actively involved in various professional and civic

organizations, including as a member of the New York State Pattern Civil Jury Instructions Committee since 2003.

Justice NeMoyer received a B.S. in Business Administration from the State University of New York at Binghamton in 1974, his J.D. from the State University of New York at Buffalo School of Law in 1977 and a M.A. in Economics from State University of New York at Buffalo in 1984. Justice NeMoyer was recognized by the New York State Trial Lawyers Association-Western District, as Judge of the Year 2006; the Erie County Bar Association-Commercial and Bankruptcy Committee as Judge of the Year 2001 for the establishment of the Commercial Division; the Erie County Bar Association-Matrimonial and Family Law Committee, as Jurist of the Year 2000; and the University of Buffalo Law Alumni Association-Distinguished Alumni Award for Public Service in 1999.

Justice NeMoyer and his wife Elyse (Hurwitz) live in Orchard Park and are the proud parents of four adult daughters. Justice NeMoyer retired from the New York State Supreme Court, Appellate Division, Fourth Department on December 31, 2022.



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PAUL VAN OSSELAER is a nationally-recognized mediator and arbitrator specializing in insurance coverage, bad faith and risk transfer disputes. He serves as a neutral throughout the country, conducting mediation or arbitration proceedings in-person or online.

He's been honored by his neutral peers. Paul is 2023-24 President and a "Distinguished Fellow" of the **International Academy of Mediators**, an invitation-only organization of approximately 250 commercial mediators from around the world. He has been inducted into the **National Academy of Distinguished Neutrals** and is one of only 112 US mediators listed in the British-based *Who's Who Legal: Mediation*.

He's been honored by his insurance peers. Paul is repeatedly listed in **Best Lawyers in America®** in **Insurance Law** and in **Mediator**. He also received one of its 2019 "Lawyer of the Year" awards in Insurance Law and his ADR practice holds the status of a **"Tier 1 Best Law Firm®"** in Insurance Law. And **"Super Lawyers®"** repeatedly lists him in **Insurance** and **Alternative Dispute Resolution**. Paul is a published author on mediating and arbitrating coverage cases and is a regular speaker/trainer at legal, insurance, ADR, and risk management seminars around the country.

Before his ADR practice, Paul was a well-known trial and coverage lawyer. In 2000, while a practicing coverage lawyer, he served as **Vice-Chair of the ABA Litigation Section Insurance Coverage Committee**. More recently as coverage neutral, he is co-chair of its **ADR Subcommittee**.

Paul is a graduate of the University of Texas School Of Law, a Past-President of its Alumni Association and recipient of its Faculty Service Award. He lives in Austin, TX and is married to Jewel Arrington, a lawyer and certified financial planner. They have two grown children: Andrew, an attorney in the Austin office of Haynes and Boone LLP, and Leigh, a Physician Assistant in San Antonio.

